

Flying under the Radar: Confidential Filings and Pre-IPO Lawsuits*

Burcu Esmer[#]

N. Bugra Ozel^{##}

Suhas A. Sridharan^{###}

* We thank David Aboody, Matt Billett, Omri Even-Tov, Jacquelyn Gillette, Umit Gurun, Grace Pownall and seminar participants at the Wharton School and the UCLA Accounting Conference for their helpful comments. We also thank Colleen Honigsberg, Robert Jackson, and Forester Wong for sharing their data with us. We gratefully acknowledge research assistance from Lucy Hansen and Do Hyung Kim.

[#] Univ. of Pennsylvania, The Wharton School. E-mail: besmer@wharton.upenn.edu

^{##} Univ. of Pennsylvania, The Wharton School and Univ. of Texas at Dallas, Jindal School of Management. E-mail: naim.ozel@utdallas.edu

^{###} Emory University, Goizueta Business School. E-mail: sridharan@emory.edu

Flying under the Radar: Confidential Filings and Pre-IPO Lawsuits

Abstract

Despite strong incentives to increase visibility and disclosure in advance of initial public offerings (IPOs), prior research finds many firms take advantage of the confidential filing provisions of the JOBS Act of 2012 to obscure their fundraising pursuits. We posit that one potential explanation for this puzzling phenomenon relates to reduced litigation risk, since confidential filing makes the IPO process less salient to the outsiders of the firm. Using a comprehensive sample of lawsuits against firms that had an IPO around the adoption of the JOBS Act, we find evidence consistent with this hypothesis. Our results reveal that IPO firms face increased litigation. However, relative to a matched sample of firms that had to file their registration publicly, firms that chose to file confidentially under the provisions of the JOBS Act experience 38% fewer lawsuits during the pre-IPO period. Moreover, our findings suggest that filing confidentially is particularly effective in shielding IPO firms from lawsuits filed by other businesses (e.g., competitors, and non-practicing entities) and from lawsuits that lack legal merit. Our findings suggest that an unintended consequence of the confidential filing provision under the JOBS Act is to provide IPO firms a means to reduce litigation risk.

JEL Classification: G10; G32; K20; K41; M41.

Keywords: Corporate disclosure; litigation risk; corporate lawsuits; initial public offerings.
